

§ 518.59

§ 518.59 Reasons for not releasing a record.

There are seven reasons for not complying with a request for a record:

(a) The request is transferred to another DoD Component, or to another federal agency.

(b) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(c) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(d) The requester has failed unreasonably to comply with procedural requirements, including payment of fees imposed by this part or DoD Component supplementing regulations.

(e) The request is withdrawn by the requester.

(f) The information requested is not a record within the meaning of the FOIA and this Regulation.

(g) The record is denied in accordance with procedures set forth in the FOIA and this part.

§ 518.60 Denial tests.

To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in subpart C of this part.

[56 FR 56010, Oct. 31, 1991]

§ 518.61 Reasonably segregable portions.

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not too reasonable to segregate portions of the records for release. The excised copies shall reflect the denied information by means of Blackened areas, which are Sufficiently Black-

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ened as to reveal no information. The best means to ensure illegibility is to cut out the information from a copy of the document and reproduce the appropriate pages. If the document is classified, all classification markings shall be lined through with a single black line, which still allows the marking to be read. The document shall then be stamped "Unclassified".

[56 FR 56010, Oct. 31, 1991]

§ 518.62 Response to requester.

(a) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. The action command or office holding the records will date- and time-stamp each request on receipt. The 10-day limit will start from the date stamped.

(b) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(c) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component. The IDA will inform the requester of his or her right to appeal, in whole or part, the denial of the FOIA or fee waiver request and that the appeal must be sent through the IDA to the Secretary of the Army (Attn: General Counsel). (See § 518.69).